



Fast Track Proposed Regulation Agency Background Document

Agency name	State Air Pollution Control Board
Virginia Administrative Code (VAC) citation	Primary action: Part VI of 9VAC5-140 Mercury (Hg) Budget Trading Program for Coal Fired Electric Steam Generating Units
Regulation title	Regulation for Emissions Trading
Action title	Repeal of Hg Budget Trading Program for Coal Fired Electric Steam Generating Units [Rev. (K11)]
Date this document prepared	December 9, 2011

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

The Virginia State Air Pollution Control Board adopted its final regulation to implement the federal Clean Air Mercury Rule (CAMR) program on January 16, 2007. The regulation was published in the Virginia Register on March 5, 2007 and became effective on April 4, 2007.

On February 8, 2008, the District of Columbia Circuit Court of Appeals, in a unanimous decision, vacated CAMR, and the associated New Source Performance Standard (NSPS). In the decision, the DC Circuit Court found that EPA's action to remove oil- and coal-fired electric generating units (EGUs) from the list of source categories to be regulated under the Clean Air Act §112 did not comply with the requirements of the statute. CAMR was vacated because the court determined that EGUs must be regulated under CAA §112 standards, rather than the §111-based standards (NSPS). The vacatur was mandated by the Court on March 14, 2008 and the associated mercury rules are no longer effective at the federal level. Because the underlying federal rule has been vacated, there is no longer a basis on which the state rule can operate, thus rendering the state rule unnecessary and inconsistent with the federal program.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On December 2, 2011, the State Air Pollution Control Board:

1. Authorized the department to promulgate the repeal of regulations entitled "Regulations for Emissions Trading," specifically Mercury (Hg) Budget Trading Program for Coal Fired Electric Steam Generating Units (Part VI of 9VAC5-140) for public comment using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act for regulations expected to be non-controversial. The Board's authorization constituted its repeal of the regulation at the end of the public comment period provided that (i) no objection to use of the fast-track process is received from 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, and (ii) the Department does not find it necessary, based on public comments or for any other reason, to make any changes to the proposal.

2. Authorized the Department to set an effective date 15 days after close of the 30-day public comment period provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) the Department does not find it necessary to make any changes to the proposal.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

Section 10.1-1308 of the Virginia Air Pollution Control Law (Title 10.1, Chapter 13 of the Code of Virginia) authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling and prohibiting air pollution in order to protect public health and welfare. Section 10.1-1328 C of the Code of Virginia requires that the Board adopt a "state model rule" or "state trading rule" that will allow the state to implement the EPA Clean Air Mercury Rule (CAMR) and facilitate the trading of Hg allowances within the United States. Letters providing written assurance from the Office of the Attorney General that (i) the Board has statutory authority to promulgate the final regulation amendments and (ii) the amendments qualify as an exemption under § 2.2-4006 A 4 c of the Administrative Process Act are available upon request.

Promulgating Entity

The promulgating entity for this regulation is the State Air Pollution Control Board.

Federal Requirements

On May 18, 2005 (70 FR 28606), EPA published the Clean Air Mercury Rule (CAMR), a rule designed to significantly reduce mercury emissions from coal-fired power plants across the country. The rule was designed to reduce the regional deposition of mercury and its subsequent entry into the food chain. CAMR was effective July 11, 2005. On June 9, 2006 (71 FR 33388) and December 22, 2006 (71 FR 77121), EPA published amendments to the CAMR.

EPA assigned each state an emissions "budget" for mercury, and each state was required to submit a plan detailing how it will meet its budget for reducing mercury from coal-fired power plants. The CAMR included emissions guidelines for the affected coal-fired utility units. States had some flexibility in how

they implement the program, but at a minimum, regulations must be at least as stringent as the guidelines.

The regulation amendments contained in this action are intended to meet the requirements of the guideline provisions of 40 CFR 62.24 (h)(6) and (7), as amended by 10.1-1328 C of the Code of Virginia. The guideline provisions consist of a cap-and-trade program and are found in 40 CFR Part 60, Subpart HHHH.

State Requirements

Section 10.1-1328 C of the Code of Virginia requires states: To ensure compliance with the EPA requirements regarding control of mercury emissions from electric generating units, the Board shall adopt and submit to the EPA the model Clean Air Mercury Rule (CAMR) promulgated by the EPA, including full participation by Virginia electric generating units in the EPA's national mercury trading program."

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The Virginia State Air Pollution Control Board adopted its final regulation to implement the federal Clean Air Mercury Rule (CAMR) program on January 16, 2007. The regulation was published in the Virginia Register on March 5, 2007 and became effective on April 4, 2007.

On February 8, 2008, the District of Columbia Circuit Court of Appeals, in a unanimous decision, vacated CAMR, and the associated New Source Performance Standard (NSPS). In the decision, the DC Circuit Court found that EPA's action to remove oil- and coal-fired electric generating units (EGUs) from the list of source categories to be regulated under the Clean Air Act §112 did not comply with the requirements of the statute. CAMR was vacated because the court determined that EGUs must be regulated under CAA §112 standards, rather than the §111-based standards (NSPS). The vacatur was mandated by the Court on March 14, 2008 and the associated mercury rules are no longer effective at the federal level. Because the underlying federal rule has been vacated, there is no longer a basis on which the state rule can operate, thus rendering the state rule unnecessary and inconsistent with the federal program.

The department is requesting approval of draft final regulation amendments to repeal Part VI of 9VAC5-140 Mercury (Hg) Budget Trading Program for Coal Fired Electric Steam Generating Units. Approval of the amendments will ensure that the board's regulations are accurate and up to date.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (1) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

On February 8, 2008, the District of Columbia Circuit Court of Appeals, in a unanimous decision, vacated CAMR, and the associated New Source Performance Standard (NSPS). In the decision, the DC Circuit Court found that EPA's action to remove oil- and coal-fired electric generating units (EGUs) from the list of source categories to be regulated under the Clean Air Act §112 did not comply with the requirements of the statute. CAMR was vacated because the court determined that EGUs must be regulated under CAA §112 standards, rather than the §111-based standards (NSPS). The vacatur was mandated by the Court on March 14, 2008 and the associated mercury rules are no longer effective at the federal level. Because the underlying federal rule has been vacated, there is no longer a basis on which the state rule can operate, thus rendering the state rule unnecessary and inconsistent with the federal program. There is no stakeholder group that is likely to object to repeal of the regulation. The use of the fast track process is, therefore, appropriate.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

Part VI of 9VAC5-140 Mercury (Hg) Budget Trading Program for Coal Fired Electric Steam Generating Units is repealed in its entirety: the purpose, definitions, measurements, abbreviations and acronyms, applicability, retired unit exemption, standard requirements, computation of time, appeal procedures, authorization and responsibilities of Hg designated representative, alternate Hg designated representative, changing Hg designated representative and alternate Hg designated representative; changes in owners and operators, certificate of representation, objections concerning Hg designated representative, delegation by Hg designated representative and alternate Hg designated representative, general Hg budget trading program permit requirements, submission of Hg budget permit applications, information requirements for Hg budget permit applications, Hg budget permit contents and term, Hg budget permit revisions, Hg trading budgets timing requirements for Hg allowance allocations, Hg allowance allocations, establishment of accounts, responsibilities of Hg authorized account representative, recordation of Hg allowance allocations, compliance with Hg budget emissions limitation, banking, account error, closing of general accounts, submission of Hg allowance transfers, EPA recordation, notification, general requirements, initial certification and recertification procedures, out of control periods, notifications, recordkeeping and reporting, and petitions.

Issues

Please identify the issues associated with the proposed regulatory action, including: (1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; (2) the primary advantages and disadvantages to the agency or the Commonwealth; and (3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.

1. Public: The primary advantage to the public is the removal of unusable regulatory requirements. There are no disadvantages to the public.
2. Department: The primary advantage to the department is the removal of regulations that are no longer necessary. There are no disadvantages to the department.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

The proposed regulation amendments to repeal Part VI of 9VAC5-140 Mercury (Hg) Budget Trading Program for Coal Fired Electric Steam Generating Units are not more restrictive than the applicable legal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There is no locality which will bear any identified disproportionate material air quality impact due to the proposal which would not be experienced by other localities.

Public participation

Please include a statement that in addition to any other comments on the regulation, the agency is seeking comments on the costs and benefits of the proposal, the potential impacts on the regulated community, and the impacts of the regulation on farm or forest land preservation.

In addition to any other comments, the Department is seeking comments on the costs and benefits of the proposal, the impacts on the regulated community, and impacts of the regulation on farm or forest land preservation. Also, the Department is seeking information on impacts to small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include (1) projected reporting, recordkeeping and other administrative costs, (2) probable effect of the proposal on affected small businesses, and (3) description of less intrusive or costly alternative methods of achieving the purpose of the proposal.

Anyone wishing to submit written comments may do so by mail, email, or fax to the staff contact listed below. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at www.townhall.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last day of the public comment period. Commenters submitting faxes are encouraged to provide the signed original by postal mail within one week.

All comments requested by this document must be submitted to the agency contact: Mary E. Major, Environmental Program Manager, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, Virginia, 23218 (email mary.major@deg.virginia.gov, fax 804-698-4510).

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: (1) the establishment of less stringent compliance or reporting requirements; (2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; (3) the consolidation or simplification of compliance or reporting requirements; (4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and (5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

An analysis of the proposal was completed for alternative regulatory methods that will minimize the adverse impact on small businesses without compromising health, safety, environmental and economic welfare.

The repeal of Part VI of 9VAC5-140 Mercury (Hg) Budget Trading Program for Coal Fired Electric Steam Generating Units does not differ materially from the pertinent EPA regulations, but will in fact, correctly reflect the DC Circuit Court decision to vacate the federal regulations. A failure to repeal any portion of Part VI of 9VAC5-140 Mercury (Hg) Budget Trading Program for Coal Fired Electric Steam Generating Units could lead to confusion on the part of regulated businesses, individuals, and communities and would compromise the effectiveness of the board’s regulations in protecting the health and welfare of the public.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures.	It is not expected that the repeal of this regulation will result in any cost to the Department.
Projected cost of the new regulations or changes to existing regulations on localities.	There are no projected costs to localities resulting from the repeal of this regulation.
Description of the individuals, businesses or other entities likely to be affected by the new regulations or changes to existing regulations.	The facilities that are subject to this regulation are the facilities subject to the federal requirements that no longer apply due to the vacatur mandated by the Court on March 14,
Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	Only coal-fired electric generating units with a nameplate capacity greater than 25 MWe are subject to the proposal. No small businesses are affected under this proposal.
All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs. Be	Because the regulation is not in use, there are no projected costs of any kind to any individual, business or other entity resulting from the repeal of this regulation.

<p>sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	
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Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

Alternatives to the proposed regulation amendments were considered by the Department. The Department determined that the first alternative is appropriate, as it is the least burdensome and least intrusive alternative that fully meets the purpose of the regulation. The alternatives considered by the Department, along with the reasoning by which the Department has rejected any of the alternatives being considered, are discussed below.

1. Repeal Part VI of 9VAC5-140 Mercury (Hg) Budget Trading Program for Coal Fired Electric Steam Generating Units thereby satisfy the provisions of the law and associated regulations and policies. This option was chosen because it makes the state regulations administratively correct. Due to the vacatur of the federal CAMR mandated by the DC Circuit Court on March 14, 2008 the associated mercury rules are no longer effective at the federal level. Because the underlying federal rule has been vacated, there is no longer a basis on which the state rule can operate, thus rendering the state rule unnecessary and inconsistent with the federal program.
2. Make alternative regulatory changes to those required by the provisions of the law and associated regulations and policies. This option was not chosen because an amended regulation would still be either unusable or unnecessary as there are no affected sources within the Commonwealth.
3. Take no action to amend the regulations and continue to keep Part VI of 9VAC5-140 Mercury (Hg) Budget Trading Program for Coal Fired Electric Steam Generating Units effective. This option was not chosen because Part VI of 9VAC5-140 Mercury (Hg) Budget Trading Program for Coal Fired Electric Steam Generating Units is no longer needed due to the vacatur if the federal CAMR mandated by the DC Circuit Court on March 14, 2008.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: (1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; (2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; (3) strengthen or erode the marital commitment; and (4) increase or decrease disposable family income.

It is not anticipated that these regulation amendments will have a direct impact on families.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all provisions of the new regulation or changes made to existing regulations between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
9VAC5-140-5010.	N/A	Provides purpose of regulation	Repeal section; District of Columbia Circuit Court of Appeals vacated the corresponding federal rule
140-5020	N/A	Provides definitions	Repeal section; District of Columbia Circuit Court of Appeals vacated the corresponding federal rule
140-5030	N/A	Provides provisions for measurements, abbreviations, and acronyms	Repeal section; District of Columbia Circuit Court of Appeals vacated the corresponding federal rule
140-5040	N/A	Provides provisions for applicability:	Repeal section; District of Columbia Circuit Court of Appeals vacated the corresponding federal rule
140-5060	N/A	Provides provisions for standard requirements	Repeal section; District of Columbia Circuit Court of Appeals vacated the corresponding federal rule
140-5070	N/A	Explains computation of time as utilized in regulation	Repeal section; District of Columbia Circuit Court of Appeals vacated the corresponding federal rule
140-5080	N/A	Provides provisions for appeal procedures:	Repeal section; District of Columbia Circuit Court of Appeals vacated the corresponding federal rule
140-5100	N/A	Provides provisions for authorization and responsibilities of Hg designated representative	Repeal section; District of Columbia Circuit Court of Appeals vacated the corresponding federal rule
140-5110	N/A	Provides provisions for alternate Hg designated representative	Repeal section; District of Columbia Circuit Court of Appeals vacated the corresponding federal rule
140-5120	N/A	Provides provisions for changing Hg designated representative and alternate Hg designated representative; changes in owners and operators	Repeal section; District of Columbia Circuit Court of Appeals vacated the corresponding federal rule
140-5130	N/A	Provides provisions for	Repeal section; District of Columbia Circuit

		Certificate of Representation	Court of Appeals vacated the corresponding federal rule
140-5140	N/A	Provides provisions for objections concerning Hg designated representative	Repeal section; District of Columbia Circuit Court of Appeals vacated the corresponding federal rule
140-5150	N/A	Provides provisions for delegation by Hg designated representative and alternate Hg designated representative	Repeal section; District of Columbia Circuit Court of Appeals vacated the corresponding federal rule
140-5200	N/A	Provides provisions for general Hg Budget Trading Program permit requirements	Repeal section; District of Columbia Circuit Court of Appeals vacated the corresponding federal rule
140-5210	N/A	Provides provisions for submission of Hg budget permit applications	Repeal section; District of Columbia Circuit Court of Appeals vacated the corresponding federal rule
140-5220	N/A	Provides provisions for information requirements for Hg budget permit applications	Repeal section; District of Columbia Circuit Court of Appeals vacated the corresponding federal rule
140-5230	N/A	Provides provisions for Hg budget permit contents and term	Repeal section; District of Columbia Circuit Court of Appeals vacated the corresponding federal rule
140-5240	N/A	Provides provisions for Hg budget permit revisions	Repeal section; District of Columbia Circuit Court of Appeals vacated the corresponding federal rule
140-5300	N/A	Reserved	Repeal section; District of Columbia Circuit Court of Appeals vacated the corresponding federal rule
140-5400	N/A	Provides provisions for Hg trading budgets	Repeal section; District of Columbia Circuit Court of Appeals vacated the corresponding federal rule
140-5410	N/A	Provides provisions for timing requirements for Hg allowance allocations	Repeal section; District of Columbia Circuit Court of Appeals vacated the corresponding federal rule
140-5420	N/A	Provides provisions for Hg allowance allocations	Repeal section; District of Columbia Circuit Court of Appeals vacated the corresponding federal rule
140-5500	N/A	Reserved	Repeal section; District of Columbia Circuit Court of Appeals vacated the corresponding federal rule
140-5510	N/A	Provides provisions for establishment of accounts	Repeal section; District of Columbia Circuit Court of Appeals vacated the corresponding federal rule
140-5520	N/A	Provides provisions for responsibilities of Hg authorized account representative	Repeal section; District of Columbia Circuit Court of Appeals vacated the corresponding federal rule
140-5530	N/A	Provides provisions for recordation of Hg allowance allocations	Repeal section; District of Columbia Circuit Court of Appeals vacated the corresponding federal rule
140-5540	N/A	Provides provisions for compliance with Hg budget emissions	Repeal section; District of Columbia Circuit Court of Appeals vacated the corresponding federal rule

		limitation	
140-5560	N/A	Provides provisions for correcting account errors	Repeal section; District of Columbia Circuit Court of Appeals vacated the corresponding federal rule
140-5570	N/A	Provides provisions for closing of general accounts.	Repeal section; District of Columbia Circuit Court of Appeals vacated the corresponding federal rule
140-5600	N/A	Provides provisions for submission of Hg allowance transfers	Repeal section; District of Columbia Circuit Court of Appeals vacated the corresponding federal rule
140-5610	N/A	Provides provisions for EPA recordation	Repeal section; District of Columbia Circuit Court of Appeals vacated the corresponding federal rule
140-5620	N/A	Provides provisions for allowance transfer notification	Repeal section; District of Columbia Circuit Court of Appeals vacated the corresponding federal rule
140-5700	N/A	Provides provisions for general requirements for monitoring and reporting	Repeal section; District of Columbia Circuit Court of Appeals vacated the corresponding federal rule
140-5710	N/A	Provides provisions for Initial certification and recertification procedures	Repeal section; District of Columbia Circuit Court of Appeals vacated the corresponding federal rule
140-5720	N/A	Provides provisions for out of control periods	Repeal section; District of Columbia Circuit Court of Appeals vacated the corresponding federal rule
140-5730	N/A	Provides provisions for monitoring and reporting notifications	Repeal section; District of Columbia Circuit Court of Appeals vacated the corresponding federal rule
140-5740	N/A	Provides provisions for recordkeeping and reporting	Repeal section; District of Columbia Circuit Court of Appeals vacated the corresponding federal rule
140-5750	N/A	Provides provisions for petitions	Repeal section; District of Columbia Circuit Court of Appeals vacated the corresponding federal rule

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